

Message Text

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ACTION ARA-10

INFO OCT-01 IO-13 ISO-00 CIAE-00 INR-07 JUSE-00
NSAE-00 SNM-02 TRSE-00 USIA-15 NSC-05 OES-06
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H-02 DODE-00 /081 W
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FM AMEMBASSY GUATEMALA
TO SECSTATE WASHDC PRIORITY 5370
INFO USMISSION GENEVA
AMEMBASSY MEXICO
DEA HQS WASHDC
AMEMBASSY MANAGUA
AMEMBASSY SAN JOSE
AMEMBASSY SAN SALVADOR
AMEMBASSY TEGUCIGALPA

UNCLAS GUATEMALA 1912

E.O. 11652: N/A
TAGS: SNAR, GT
SUBJ: GUATEMALA STIFFENS ITS NARCOTICS LAWS

REF: (A) STATE 57902 (NOTAL), (B) GUATEMALA 661 (NOTAL)

1. IN A MAJOR STEP FORWARD FOR NARCOTICS ENFORCEMENT IN GUATEMALA, GUATEMALAN CONGRESS MARCH 22 PASSED AND SENT TO THE PRESIDENT LAW NUMBER 10-77 GREATLY INCREASING PENALTIES FOR INTERNATIONAL TRAFFICKING AND IN CERTAIN CASES FOR DOMESTIC TRAFFICKING IN NARCOTICS.

2. AS REPORTED REF B, CHIEF JUSTICE SUPREME COURT HAD BEEN RECEPTIVE TO SUGGESTION MADE TO HIM JANUARY 28 BY EMBASSY AND DEA OFFICERS THAT GUATEMALA LAW SERIOUSLY DEFICIENT IN PERMITTING NARCOTICS VIOLATORS TO "COMMUTE" THEIR SENTENCES, THAT IS, TO OBTAIN THEIR RELEASE FROM PRISON BY PAYING NOT
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MORE THAN FIVE DOLLARS FOR EACH DAY OF THEIR SENTENCE. EMBASSY SUBSEQUENTLY SENT CHIEF JUSTICE COPIES OF BRAZILIAN, COLOMBIAN, AND BOLIVIAN NARCOTICS LAWS WHICH WERE SUPPLIED BY DEPARTMENT AND EMBASSIES BOGOTA AND BRASILIA. ON FEBRUARY 22 CHIEF JUSTICE SENT CONGRESS HIS PROPOSED AMENDMENTS TO GUATEMALAN CRIMINAL CODE, AND THESE WERE PASSED WITHOUT CHANGE. HOWEVER, AMEND-

MENTS DO NOT ENTER INTO FORCE UNTIL SIGNED BY PRESIDENT
AND PUBLISHED IN OFFICIAL GAZETTE, WHICH CAN TAKE AS
LONG AS A MONTH.

3. EXISTING LAW PROVIDES THAT "THE PENALTY SPECIFIED
IN THE PREVIOUS ARTICLE WILL BE INCREASED BY ONE-THIRD
IN THE FOLLOWING CASES: (1) WHEN THE SUBSTANCE OR
PRODUCT REFERRED TO IN PREVIOUS ARTICLE IS GIVEN TO A
MINOR, AND (2) WHEN THE OFFENDER IS A PHYSICIAN, CHEMIST,
BIOLOGIST, PHARMACIST, DENTIST, LABORATORY TECHNICIAN,
NURSE, OBSTETRICIAN OR MIDWIFE."

4. NEW LAW PROVIDES THAT PENALTIES SPECIFIED ABOVE
"WILL BE INCREASED BY ONE-THIRD IN THE FOLLOWING CASES:

"(1) WHEN THE COMMISSION OF THE OFFENSE OCCURS WITHIN A
PUBLIC OR PRIVATE SCHOOL OR IN ITS IMMEDIATE VICINITY;

"(2) WHEN THE SUBSTANCE OR PRODUCT...IS SOLD OR GIVEN
TO A MINOR;

"(3) WHEN THE OFFENDER IS A PHYSICIAN, CHEMIST, BIOLOGIST,
PHARMACIST, DENTIST, LABORATORY TECHNICIAN, NURSE, OBSTETRICIAN,
MIDWIFE, TEACHER, MINISTER OR PRIEST, OR OTHERS RESPONSIBLE
FOR THE LEADERSHIP OF GROUPS. ALSO THOSE PUBLIC EMPLOYEES
AND OFFICIALS WHO TAKE ADVANTAGE OF THEIR POSITION (TO COMMIT
THE OFFENSE);

"(4) WHEN THE OFFENSES...INCLUDE ACTIVITIES OF INTERNATIONAL
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TRAFFICKING OR HAVE A CONNECTION OF ANY KIND WITH IT. IN SUCH
CASES, THE SENTENCES WILL BE INCOMMUTABLE, THE FINES WILL BE
FROM FIVE THOUSAND TO 50 THOUSAND QUETZALES (ONE QUETZAL
EQUALS ONE DOLLAR), AND THE CIVIL RESPONSIBILITIES, IN THE
CASES SPECIFIED IN ARTICLE 83 OF THE CODE OF CRIMINAL
PROCEDURE, WILL BE FIXED BETWEEN 10 THOUSAND AND 100 THOUSAND
QUETZALES."

5. WITH REGARD TO REF A, IT WILL BE SEEN FROM FOREGOING
THAT GUATEMALAN LAW MAKES NO DISTINCTION BETWEEN TRAFFICKING
AND POSSESSION AND NONE BETWEEN MARIHUANA AND HARD NARCOTICS.
OBVIOUSLY COURTS, IN DECIDING BETWEEN A LESSER OR MORE SEVERE
PENALTY, MAY TAKE FACT THAT ONLY MARIHUANA IS INVOLVED INTO
ACCOUNT. HOWEVER, NEW LAW MAKES JAIL SENTENCE FOR POSSESSION
OF MARIHUANA MANDATORY IF POSSESSOR IS IN ANY WAY INVOLVED IN
INTERNATIONAL TRAFFICKING.
BOSTER

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